

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GERALD A. KEYSER,

Plaintiff-Appellee,

v

GORDON A. NICKERT and DENISE ROUX,  
Personal Representatives of the ESTATE OF  
CHERYL A. NICKERT-KEYSER

Defendant-Appellant.

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UNPUBLISHED

July 31, 2012

No. 303350

Montmorency Circuit Court

LC No. 10-002412-DO

Before: MARKEY, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

In this divorce action, the estate of Cheryl A. Nickert-Keyser (“defendant”) is pursuing a challenge to the trial court’s real-property disposition and attorney-fee awards.<sup>1</sup> We conclude that the trial court failed to make the necessary findings of fact for a meaningful appellate review of these issues. Therefore, we reverse and remand for further proceedings consistent with this opinion.

Plaintiff Gerald A. Keyser and Nickert-Keyser married in 2006. Before this, they cohabited since 1975 and jointly acquired various assets and debts. The court awarded to plaintiff the parties’ two real properties: the marital home on Granholm Road and a second home on Moon Lake. The court also awarded plaintiff a “fifth wheel” trailer, three boats, two automobiles, and other personal property. The court awarded Nickert-Keyser four automobiles and other personal property. The trial court divided the portions of the parties’ pensions acquired during their marriage; retirement money accumulated before their 2006 marriage remained separate property. The court ordered plaintiff to pay most of the parties’ credit-card debt, their debt on the real properties, and a judgment on the “fifth wheel” trailer obtained by Nickert-Keyser’s father for repayment of a loan to the parties. Finally, the court also ordered plaintiff to

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<sup>1</sup> According to defense counsel, Cheryl A. Nickert-Keyser passed away soon after filing this appeal. Due to Nickert-Keyser’s death, the estate has dropped any claim of appeal regarding the spousal support award.

pay spousal support of \$300 per month for 36 months, Nickert-Keyser's health insurance for three years, and \$1,000 of her attorney fees.

Defendant first challenges the real-property award. When reviewing a trial court's property-disposition ruling, this Court first reviews the trial court's findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A finding of fact is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *Gates v Gates*, 256 Mich App 420, 432-433; 664 NW2d 231 (2003). If the findings of fact are upheld, we must then decide whether the dispositional ruling was fair and equitable in light of those facts. *Sparks*, 440 Mich at 151-152. We will affirm the dispositional ruling unless we are left with a definite and firm conviction that the division was inequitable. *Id.* at 152.

Trial courts consider the following factors in dividing the marital estate: (1) the duration of the marriage, (2) the contributions of the parties to the marital estate, (3) the age of the parties, (4) the health of the parties, (5) the life situation of the parties, (6) the necessities and circumstances of the parties, (7) the parties' earning abilities, (8) the parties' past relations and conduct, and (9) general principles of equity. *Berger v Berger*, 277 Mich App 700, 717; 747 NW2d 336 (2008). The trial court may also consider additional factors that are relevant, including fault. *Id.*; *Washington v Washington*, 283 Mich App 667, 675-676; 770 NW2d 908 (2009). The trial court must consider and make specific findings of fact regarding all relevant factors but must not assign disproportionate weight to any one circumstance. *McNamara v Horner*, 249 Mich App 177, 186; 642 NW2d 385 (2002).

In this case, the trial court awarded both the Granholm Road and Moon Lake properties to plaintiff, even though plaintiff testified that he was "willing to let [Nickert-Keyser] have [the Granholm Road property]." In reviewing this issue, we conclude that the trial court failed to make findings regarding the values of the real property. The trial court must make specific findings regarding property values. *Olson v Olson*, 256 Mich App 619, 627-628; 671 NW2d 64 (2003). Moreover, the court also failed to make specific findings for most of the relevant property-division factors.<sup>2</sup> See *McNamara*, 249 Mich App at 186. One important factor was fault and misconduct by plaintiff, namely marital infidelity and physical abuse of Nickert-Keyser. See *Washington*, 283 Mich App at 675-676. In his testimony, plaintiff admitted pushing Nickert-Keyser. Nickert-Keyser testified that plaintiff did much more and that the abuse left her physically and mentally scarred, including a limp, knee injury, and mental breakdowns. Given the trial court's failure to properly make the specific findings of fact, we cannot conduct a meaningful appellate review of the court's real-property disposition.

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<sup>2</sup> Specifically, the trial court failed to make specific findings of fact regarding the parties' contributions to the marital estate, the life situation of the parties, the necessities and circumstances of the parties, the parties' earning abilities, the parties' past relations and conduct, fault, and whether general principles of equity favored a particular disposition. See *Berger*, 277 Mich App at 717; *Washington*, 283 Mich App at 675-676.

Therefore, we reverse the court's real-property award and remand for the court to make appropriate factual findings and revisit its disposition.

Defendant also challenges the \$1,000 attorney-fee award. The grant or denial of attorney fees is reviewed for abuse of discretion. *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005); *Olson*, 256 Mich App at 634. "Any findings of fact on which the trial court bases an award of attorney fees are reviewed for clear error . . ." *Reed*, 265 Mich App at 164. A party in a divorce action is not entitled to attorney fees as of right. *Stoudemire v Stoudemire*, 248 Mich App 325, 344; 639 NW2d 274 (2001). MCL 552.13(1) provides that a court may require a party in an action for divorce to "pay any sums necessary to enable the adverse party to carry on or defend the action, during its pendency." See also *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997) ("An award of legal fees in a divorce action is authorized when it is necessary to enable the party to carry on or defend that suit."). Under MCR 3.206(C)(1), a party may, at any time, request that the court order the opposing party to pay attorney fees. Under MCR 3.206(C)(2), a party who requests attorney fees must allege sufficient facts to show that either (1) the party cannot bear the expense of the action and the opposing party can or that (2) the party incurred the attorney fees because the opposing party refused to comply with a previous court order. Moreover, a trial court may also award attorney fees "when the party requesting payment has been forced to incur them as a result of the other party's unreasonable conduct in the course of litigation." *Hawkins*, 222 Mich App at 669. A court may not require a party to invade assets relied upon for his own support to pay attorney fees. *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 644 (1993).

In the present case, Nickert-Keyser's trial attorney filed a verified motion for fees and submitted a detailed bill of \$2,995.25 for work from April 15, 2010, through September 28, 2010. This did not include the trial, trial preparation, or post-judgment matters. Fees were computed at \$175 per hour. The trial court awarded Nickert-Keyser \$1,000 for attorney fees, and it did so without articulating a basis for the award. We have previously cautioned trial courts that "specific findings regarding the necessity of a fee award should be made." *Stackhouse v Stackhouse*, 193 Mich App 437, 446; 484 NW2d 723 (1992). Moreover, trial courts must make factual findings regarding the reasonableness of the fees incurred. *Reed*, 265 Mich App at 165-166. A "trial court may not award attorney fees . . . solely on the basis of what it perceives to be fair or on equitable principles." *Id.* at 166. This Court has concluded that a failure to make a specific finding of necessity for a fee award can be harmless error when a trial court has made factual findings that are sufficient to support the necessity of a fee award (such as findings regarding the parties' income or unreasonable conduct during litigation). *Stackhouse*, 193 Mich App at 445-446. However, we cannot conclude that the trial court's failure to articulate its basis for its fee award in this case is harmless given the court's scant factual findings. Accordingly, we reverse the court's attorney-fee award and remand for the trial court to make specific findings regarding defendant's request for attorney fees and reconsider the issue.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Markey  
/s/ Jane M. Beckering  
/s/ Michael J. Kelly